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In re Application of
VERSTEGEN et al. :
Application No.: 10/070,523
PCT No.: PCT/NL00/00611
Int. Filing Date: 01 September 2000 : DECISION
Priority Date: 02 September 1999
Attorney Docket No.: 294-123 PCT/US
For: IMPROVED METHODS AND MEANS FOR
RETROVIRAL GENE DELIVERY

This is a decision on applicant's "Response to Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" filed in the United States Patent and Trademark Office (USPTO) on 09 September 2002.

BACKGROUND

On 01 September 2000, applicant filed international application No. PCT/NL00/00611 which claimed priority of an earlier European patent application filed 02 September 1999. A copy of the international application had been communicated earlier to the United States Patent and Trademark Office from the International Bureau on 08 March 2001.

On 02 April 2001, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 March 2002 (02 March 2002 was a Saturday and 03 March 2002 was a Sunday).

On 05 March 2002, one day after the expiration of the thirty month period, applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the basic national fee and a copy of the international application.

On 10 May 2002, although the application was abandoned for failure to pay the basic national fee by the thirty month deadline, the DO EO US mailed a Notification of Missing Requirements (Form PCT DO EO 905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period.

On 09 September 2002, a response to the Notification of Missing Requirements was filed along with a combined declaration power of attorney executed by the inventors.

On 05 August 2002, applicant filed a petition to revive with the petition fee of \$640 for a small entity requesting revival of the application abandoned because applicant failed to provide

the full U.S. basic national fee by the thirty month deadline. On 20 December 2002, a decision was mailed to applicant indicating that the application was revived and the DO EO US was directed to issue a new Notification of Missing Requirements indicating that an oath or declaration executed by the inventors and the surcharge for filing the oath or declaration after the thirty month period.

DISCUSSION

The response to the 10 May 2002 Notification of Missing Requirements was located subsequent to the 20 December 2002 mail date of the decision. The Notification set forth a two month time period within which to respond, with extensions of time available under 37 CFR 1.1136(a). The response was filed on 09 September 2002, four months after the mail date of the Notification of Missing Requirements. Thus, a two month extension of time is required and per applicant's authorization, the fee for a two month extension of time (\$200 for a small entity) will be charged to the deposit account.

A review of the declaration/power of attorney indicates that the declaration submitted on 09 September 2002 identifies each inventor and country of citizenship of each inventor. However, the declaration submitted contained two identical sheets of page 4. Each page is signed by different inventors. Thus, the declaration is not properly executed. It appears that the attorney pieced together two separate complete declarations into one composite declaration or that the inventors were presented with an incomplete declaration. What is required is one declaration where all inventors have signed or two separate complete declarations. Thus, the requirements of 37 CFR 1.497 have not been met and the declaration is unacceptable.

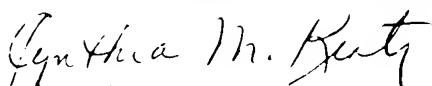
CONCLUSION

The declaration filed on 09 September 2002 is deemed responsive to the Notification of Missing Requirements. As discussed above, the \$200 fee for a two month extension of time will be charged to applicants' deposit account.

The declaration submitted on 09 September 2002 is unacceptable as filed. What is required is one declaration where all inventors have signed or two separate complete declarations in compliance with 37 CFR 1.497. Applicant is required to correct the above-noted defects including the furnishing of an oath/declaration in compliance with 1.497 within **TWO (2) MONTHS** from the mail date of this Decision.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

The application will be held in the PCT Legal Office to await applicant's response.



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